

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

**Adopted and Filed**

**Rule making related to employee stock ownership plan (ESOP) formation assistance**

The Economic Development Authority (IEDA) hereby amends Chapter 56, “Employee Stock Ownership Plan (ESOP) Formation Assistance,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 15.106A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 15.108 and 2013 Iowa Acts, House File 648.

*Purpose and Summary*

The ESOP Formation Assistance Program was established in 2014. The program offers reimbursement of up to 50 percent of the cost of a feasibility study for establishing an ESOP.

These amendments offer clarification of program policies and streamline the approval process. Changes include the following:

- Remove outdated contact information for IEDA.
- Add clarification of eligible costs and exclude costs incurred prior to approval of financial assistance from reimbursement.
- Add clarification on application scoring related to the value of an applicant business and employees of an applicant business.
- Make engagement of outside application reviewers optional.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on December 14, 2022, as **ARC 6738C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Authority Board on January 20, 2023.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition IEDA for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on March 29, 2023.

The following rule-making actions are adopted:

ITEM 1. Rescind the definition of "Board" in rule **261—56.2(85GA, HF648)**.

ITEM 2. Amend rule 261—56.3(85GA, HF648) as follows:

**261—56.3(85GA, HF648) Program description.**

**56.3(1)** No change.

**56.3(2) Application.**

*a.* Each fiscal year in which funding is available, the authority will accept applications for assistance under the program and make funding decisions on a rolling basis.

*b.* Information on submitting an application under the program may be obtained by contacting the economic development authority. ~~The contact information is:~~

~~Iowa Economic Development Authority~~

~~Office of General Counsel~~

~~200 East Grand Avenue~~

~~Des Moines, Iowa 50309~~

~~(515)725-3000~~

~~[businessfinance@iowa.gov](mailto:businessfinance@iowa.gov)~~

~~<http://iowaeconomicdevelopment.com/>~~

**56.3(3) Approval of assistance.** ~~The authority, with the assistance of an ESOP advisory panel, Authority staff~~ will consider, evaluate, and recommend applications for financial assistance under the program. ~~The authority may consult with an ESOP advisory panel will consist consisting~~ of individuals selected by the director who have demonstrated expertise in the formation and operation of ESOPs as needed. Authority staff ~~and the members of the advisory panel~~ will review applications for financial assistance and score the applications according to the criteria described in rule 261—56.4(85GA, HF648). Applications deemed to meet the minimum scoring criteria will be submitted to the director for a final funding decision.

**56.3(4)** No change.

**56.3(5) Use of funds.** An applicant shall use funds provided only for the purpose of reducing the cost of services of an independent financial professional for evaluating the feasibility of an ESOP and forming an ESOP. The authority may require documentation or other information establishing the actual costs incurred ~~for such formation.~~ The financial assistance shall be provided to the applicant after the costs are incurred and on a reimbursement basis. Costs incurred prior to approval of financial assistance will not be eligible for reimbursement.

ITEM 3. Amend rule 261—56.4(85GA, HF648) as follows:

**261—56.4(85GA, HF648) Program eligibility, application scoring, and funding decisions.**

**56.4(1) Program eligibility.** To be eligible under the program, an applicant shall meet all of the following requirements:

*a.* and *b.* No change.

c. The applicant shall have a valuation that is sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide information estimating the value of the business and information about the source of that estimate. This information may be a good-faith estimate. The authority will not set a specific minimum valuation; however, applicants are advised that a business with valuation less than \$5 million may not be considered a feasible candidate for an ESOP.

d. The applicant shall have a number of employees, eligible employee types, and a total payroll that are sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant payroll information. The authority will not set a specific minimum number of employees; however, applicants are advised that a business with fewer than 25 employees may not be a feasible candidate for an ESOP.

e. to g. No change.

h. The applicant has not completed a feasibility study for purposes of exploring an ESOP formation in the three years prior to application for the program. An applicant who has engaged a service provider as of the time of application shall provide a copy of the engagement letter to the authority.

~~i. The applicant has not engaged a feasibility service provider prior to July 1, 2013. An applicant who has engaged a service provider as of the time of application shall provide a copy of the engagement letter to the authority.~~

**56.4(2) Application scoring.** A business meeting the requirements of subrule 56.4(1) may apply to the authority for financial assistance under the program. The authority will review applications for completeness ~~and~~. The authority may engage an ESOP advisory panel for assistance in evaluating the applications as needed. As part of the evaluation process, an applicant ~~will~~ may be required to interview with authority staff and with members of the ESOP advisory panel about the applicant's business, future plans, and interest in forming an ESOP. Authority staff ~~and members of the ESOP advisory panel~~ will evaluate the applications and give them an average numerical score between 0 and 100. The numerical score will reflect the extent to which an applicant is a feasible candidate for an ESOP. In determining the numerical score, the authority ~~and the members of the advisory panel~~ will take into account the extent to which each applicant meets the requirements of subrule 56.4(1). The authority will keep records of the scoring process and make those records available to applicants.

**56.4(3) Funding decisions.** Each application, including its numerical score, will be referred to the director with a recommended funding decision. The director will make the final funding decision on each application, taking into consideration the score and the funding recommendation of ~~the ESOP advisory panel~~ authority staff. The director may not approve funding for an application that receives an average score of less than 50 points.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/22/23.